



***Texas Occupations Code  
Title 3. Health Professions  
Subtitle M. Regulation of Other Health Professions  
Chapter 502. Marriage and Family Therapists***

***Formerly codified as Vernon's Texas Civil Statutes, Article 4512c-1  
Enacted by the 72nd Texas Legislature effective September 1, 1991  
Re-codified into the Texas Occupations Code effective September 1, 1999***

***An Act relating to licensing and regulation of Marriage and Family Therapists and Marriage and Family Therapist Associates and duties of the Texas State Board of Examiners of Marriage and Family Therapists; authorizing fees to meet expenses necessary to administer the Act, requiring an annual audit and certain reports; defining certain offenses and providing penalties.***

**CHAPTER 502. MARRIAGE AND FAMILY THERAPISTS**  
**Table of Contents**

**SUBCHAPTER A. GENERAL PROVISIONS**

§ 502.001. Short Title.....	3
§ 502.002. Definitions. ....	3
§ 502.003. Application of Sunset Act.....	3
§ 502.004. Application of Chapter.....	3

**SUBCHAPTER B. BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS**

§ 502.051. Board; Membership.....	3
§ 502.052. Membership; Restrictions.....	3
§ 502.053. Membership and Employee Restrictions.....	4
§ 502.054. Terms; Vacancy.....	4
§ 502.055. Officers.....	4
§ 502.056. Grounds for Removal .....	4
§ 502.057. Compensation; Reimbursement.....	4
§ 502.058. Meetings.....	4
§ 502.059. Training Requirements.....	4

**SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL**

§ 502.101. Executive Director.....	5
§ 502.102. Powers and Duties of Executive Director.....	5
§ 502.103. Personnel.....	5
§ 502.104. Division of Responsibilities.....	5
§ 502.105. Qualifications and Standards of Conduct Information.....	5

**SUBCHAPTER D. BOARD POWERS AND DUTIES**

§ 502.151. General Powers and Duties of Board.....	5
§ 502.152. Rules Regarding Board Procedures.....	5
§ 502.153. Fees.....	5
§ 502.154. Expenditure of Funds.....	5
§ 502.155. Powers and Duties Regarding Examination.....	5
§ 502.156. Rules Restricting Advertising or Competitive Bidding.....	6
§ 502.157. Annual Registry.....	6
§ 502.158. Board Duties Regarding Complaints.....	6
§ 502.159. Ex Parte Communication Prohibited.....	6
§ 502.160. Annual Report.....	6

**SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

§ 502.201. Public Interest Information.....	6
§ 502.202. Complaints.....	6
§ 502.203. Records of Complaints.....	6
§ 502.204. General Rules Regarding Complaint Investigation and Disposition.....	7
§ 502.205. Public Participation.....	7

**SUBCHAPTER F. LICENSE REQUIREMENTS AND EXEMPTIONS**

§ 502.251. License Required.....	7
§ 502.252. License Application.....	8
§ 502.253. Determination Whether Examination Required.....	9
§ 502.254. Examination.....	9
§ 502.255. Examination Results.....	10
§ 502.256. Reexamination.....	10
§ 502.257. Issuance of License.....	10
§ 502.258. Temporary License.....	10
§ 502.259. Provisional License.....	10
§ 502.260. Inactive Status.....	11
§ 502.261. Duties of License Holder.....	11

## TABLE OF CONTENTS - CONTINUED

### SUBCHAPTER G. LICENSE RENEWAL

§ 502.301. Renewal of License.....	11
§ 502.302. Renewal of Expired License by Out-Of-State Practitioner.....	11
§ 502.303. Continuing Education.....	11

### SUBCHAPTER H. DISCIPLINARY ACTIONS AND PROCEDURES

§ 502.351. Grounds for Disciplinary Actions.....	12
§ 502.352. Probation.....	12
§ 502.353. Informal Proceedings.....	12
§ 502.354. Hearing.....	12
§ 502.355. Sanctions.....	12

### SUBCHAPTER I. ADMINISTRATIVE PENALTY

§ 502.401. Imposition of Penalty.....	12
§ 502.402. Amount of Penalty.....	12
§ 502.403. Report and Notice of Violation and Penalty.....	13
§ 502.404. Penalty to be Paid or Hearing Requested.....	13
§ 502.405. Hearing.....	13
§ 502.406. Decision by Board.....	13
§ 502.407. Options Following Decision: Pay or Appeal.....	13
§ 502.408. Collection of Penalty.....	13
§ 502.409. Determination by Court.....	13
§ 502.410. Remittance of Penalty and Interest.....	14
§ 502.411. Administrative Procedure.....	14

### SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

§ 502.451. Injunction.....	14
§ 502.452. Monitoring of License Holder.....	14
§ 502.453. Civil Penalty.....	14
§ 502.454. Criminal Penalty.....	14

## **CHAPTER 502. MARRIAGE AND FAMILY THERAPISTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

**§ 502.001. Short Title.** This chapter may be cited as the Licensed Marriage and Family Therapist Act. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

**§ 502.002. Definitions.** See also italicized material following text of this section. In this chapter:

- (1) "Board" means the Texas State Board of Examiners of Marriage and Family Therapists.
- (2) "Commissioner" means the commissioner of public health.
- (3) "Department" means the Texas Department of Health.
- (4) "Licensed marriage and family therapist" means a person who offers marriage and family therapy for compensation.
- (5) "Marriage and family therapy" means providing professional therapy services to individuals, families, or married couples, alone or in groups, that involve applying family systems theories and techniques. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction in the context of marriage or family systems.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. **Amendment by Acts 1999, 76th Leg., ch. 51, § 1**

V.T.C.A., Government Code § 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 1 of Acts 1999, 76th Leg., ch. 51, eff. Sept. 1, 1999, adds § 2(6) of Vernon's Ann.Civ.St. art. 4512c-1 [now this section] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, § 6(a). As so added, § 2(6) reads:

- (6) 'Licensed marriage and family therapist associate' means an individual who offers to provide marriage and family therapy for compensation under the supervision of a board-approved supervisor."

#### **§ 502.003. Application of Sunset Act**

The Texas State Board of Examiners of Marriage and Family Therapists is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2005. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.004. Application of Chapter**

This chapter does not apply to:

- (1) the activities of a person employed to perform marriage and family therapy by a federal, state, county, or municipal agency or a public or private educational institution, if the activities are within the scope of the person's employment;
- (2) the activities of a student, intern, or trainee in marriage and family therapy in a recognized course of study in marriage and family therapy at an accredited institution of higher education or other training institution, if:
  - (A) the activities constitute a part of the course of study; and
  - (B) the person is called a "marriage and family therapist intern" or similar title;
- (3) services provided by a person who is not a resident of this state if:
  - (A) the services are performed for 30 days or less during a calendar year; and
  - (B) the person is authorized to provide the services under the law of the state or country of the person's residence;
- (4) the activities and services of a person licensed to practice another profession, including a physician, attorney, registered nurse, occupational therapist, psychologist, certified social worker, or licensed professional counselor; or
- (5) the activities and services of a recognized religious practitioner, including a pastoral counselor or Christian Science practitioner recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal, if the practitioner practices marriage and family therapy in a manner consistent with the laws of this state. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

## **SUBCHAPTER B. BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS**

#### **§ 502.051. Board; Membership**

(a) The Texas State Board of Examiners of Marriage and Family Therapists consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) five marriage and family therapist members; and
- (2) four members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(c) In making appointments under Subsection (a)(1), the governor shall consider recommendations made by recognized professional associations of marriage and family therapists in this state. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.052. Membership; Restrictions**

(a) A board member appointed under Section 502.051(a)(1) must:

- (1) be eligible for a license under this chapter; and
- (2) have been engaged in the practice or education of marriage and family therapy for at least five years or have 5,000 hours of clinical experience in the practice of marriage and family therapy.

(b) One member appointed under Section 502.051(a)(1) must be a professional educator in marriage and family therapy.

(c) A person is not eligible for appointment as a public member of the board under Section 502.051(a)(2) if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.053. Membership and Employee Restrictions**

(a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(d) A person may not serve as a member of the board or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.054. Terms; Vacancy**

(a) Members of the board serve staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.055. Officers**

(a) The governor shall designate a board member as the presiding officer. The presiding officer serves in that capacity at the will of the governor.

(b) At the meeting of the board held closest to August 31 of each year, the board shall elect one of its members as the assistant presiding officer. The assistant presiding officer serves as provided by board rule. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.056. Grounds for Removal**

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board;

(3) violates a prohibition established by Section 502.052(c), 502.053, or 502.159;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor that a potential ground for removal exists. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.057. Compensation; Reimbursement**

(a) A board member may not receive compensation for service on the board.

(b) A board member is entitled to:

(1) the per diem set by the General Appropriations Act for each day that the member performs duties as a board member; and

(2) reimbursement for expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.058. Meetings**

(a) The board shall meet at least twice during each year.

(b) The board may meet at other times at the call of the presiding officer or as provided by board rule. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.059. Training Requirements**

(a) Before a board member may assume the member's duties, the member must complete at least one course of the training program established by the board under this section.

(b) The training program must provide information to a participant regarding:

(1) this chapter;

(2) the programs operated by the board;

- (3) the role and functions of the board;
  - (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
  - (5) the current budget for the board;
  - (6) the results of the most recent formal audit of the board;
  - (7) the requirements of Chapters 551, 552, 2001, and 2002, Government Code;
  - (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
  - (9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.
- (c) In developing the training program, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.
- (d) If another state agency or entity is given the authority to establish the training requirements for board members, the board shall allow that training instead of developing its own program, and each member shall comply with the training requirements established by any other state agency that is given authority to establish training requirements for the board.
- Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

## **SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL**

### **§ 502.101. Executive Director**

After consulting with the board's members, the commissioner shall appoint an executive director for the board. The executive director must be an employee of the department. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.102. Powers and Duties of Executive Director**

The executive director shall administer the licensing activities under this chapter as directed by the board or the commissioner. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.103. Personnel**

- (a) The commissioner shall designate and make available to the board personnel and facilities necessary for the efficient administration of the board's duties.
- (b) The department shall:
  - (1) enter into agreements to obtain necessary services; and
  - (2) provide compensation for the services provided.
- (c) The department may employ and compensate professional consultants, technical assistants, and employees on a full-time or part-time basis as necessary to administer this chapter.
- (d) Salaries and reimbursements paid by the department under this chapter shall be comparable to the salaries and reimbursements provided for in the General Appropriations Act for persons holding comparable positions. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.104. Division of Responsibilities**

The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.105. Qualifications and Standards of Conduct Information**

The board shall provide, as often as necessary, to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
  - (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.
- Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

## **SUBCHAPTER D. BOARD POWERS AND DUTIES**

### **§ 502.151. General Powers and Duties of Board**

The board shall:

- (1) determine the qualifications and fitness of a license applicant under this chapter; and
- (2) adopt a code of professional ethics for license holders. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.152. Rules Regarding Board Procedures**

The board may adopt rules establishing the board's procedures. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.153. Fees**

- (a) The board by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.
- (b) The board may not set a fee that existed on September 1, 1993, in an amount that is less than the amount of the fee on that date. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.154. Expenditure of Funds**

The general rules of the General Appropriations Act apply to the expenditure of funds under this chapter. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.155. Powers and Duties Regarding Examination**

The board shall:

- (1) determine the times and places for licensing examinations;
- (2) offer examinations at least semiannually; and

(3) give reasonable public notice of the examinations in the manner provided by board rules. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.156. Rules Restricting Advertising or Competitive Bidding**

(a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the person's use of any advertising medium;
- (2) restricts the person's personal appearance or the use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement used by the person; or
- (4) restricts the use of a trade name in advertising by the person. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.157. Annual Registry**

(a) The board shall annually prepare a registry of all license holders.

(b) The board shall make the registry available to the public, license holders, and other state agencies. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.158. Board Duties Regarding Complaints**

(a) The board by rule shall:

- (1) adopt a form to standardize information concerning complaints made to the board; and
- (2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.159. Ex Parte Communication Prohibited**

A board member or department employee who performs functions for the board and who is assigned to make a decision, a finding of fact, or a conclusion of law in a proceeding pending before the board may not directly or indirectly communicate with a party to the proceeding or the party's representative unless notice and an opportunity to participate are given to each party to the proceeding. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.160. Annual Report**

Not later than February 1 of each year, the board shall file with the governor and the presiding officer of each house of the legislature a written report that:

- (1) describes the activities of the board; and
- (2) contains a detailed accounting of all funds received and disbursed by the board during the preceding year.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

#### **§ 502.201. Public Interest Information**

(a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and to appropriate state agencies. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.202. Complaints**

(a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

- (1) on each registration form, application, or written contract for services of a person regulated by the board;
- (2) on a sign prominently displayed in the place of business of each person regulated by the board; or
- (3) in a bill for service provided by a person regulated by the board.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.203. Records of Complaints**

(a) The board shall keep an information file about each complaint filed with the board. The information file shall be kept current and must contain a record for each complaint of:

- (1) each person contacted in relation to the complaint;
- (2) a summary of findings made at each step of the complaint process;
- (3) an explanation of the legal basis and reason for a complaint that is dismissed;
- (4) the schedule required under Section 502.204 and a notation of any change in the schedule; and
- (5) other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.204. General Rules Regarding Complaint Investigation and Disposition**

See, also, italicized material following text of this section

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection must:

- (1) distinguish between categories of complaints;
  - (2) ensure that complaints are not dismissed without appropriate consideration;
  - (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
  - (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;
- and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall:

- (1) dispose of all complaints in a timely manner; and
- (2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) Each party shall be notified of the projected schedule for the complaint.

(d) Each party to the complaint must be notified of a change in the schedule for the complaint not later than the seventh day after the date the change is made.

(e) The executive director of the board shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. **Amendment by Acts 1999, 76th Leg., ch. 1444, § 3** V.T.C.A., Government Code § 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 3 of Acts 1999, 76th Leg., ch. 1444, eff. Aug. 30, 1999, adds § 11B of Vernon's Ann.Civ.St. art. 4512c-1 [now this section] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, § 6(a). As so added, § 11B reads:

"Subpoenas

"(a) In an investigation of a complaint filed with the board, the board may request that the commissioner of public health or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

"(b) A subpoena may be served personally or by certified mail.

"(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

"(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

"(e) The board may delegate the authority granted under Subsection (a) to the executive director of the board.

"(f) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its records.

"(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

"(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Section 552.001 et seq., Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

"(1) persons involved with the board in a disciplinary action against the holder of a license;

"(2) marriage and family therapist licensing or disciplinary boards in other jurisdictions;

"(3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;

"(4) law enforcement agencies; and

"(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

"(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Section 552.001 et seq., Government Code."

#### **§ 502.205. Public Participation**

(a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **SUBCHAPTER F. LICENSE REQUIREMENTS AND EXEMPTIONS**

#### **§ 502.251. License Required**

See also italicized material following text of this section

(a) A person may not practice as a marriage and family therapist unless the person holds a license under this chapter or is exempt under Section 502.004.

(b) A person may not use the title "licensed marriage and family therapist" unless the person is licensed under this chapter.

(c) A person may not use a title that implies that the person is licensed or certified in marriage and family therapy unless the person is:

- (1) licensed under this chapter; or



(2) authorized to perform marriage and family therapy in the course and scope of another license issued under a law of this state. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. **Amendment by Acts 1999, 76th Leg., ch. 51, § 2** V.T.C.A., Government Code § 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision. Section 2 of Acts 1999, 76th Leg., ch. 51, eff. Sept. 1, 1999, amends § 15(b) of Vernon's Ann.Civ.St. art. 4512c-2 [now this section] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, § 6(a). As so amended, § 15(b) reads:

"(b) A person who is not licensed under this Act may not:

"(1) use the title 'Licensed Marriage and Family Therapist' or 'Licensed Marriage and Family Therapist Associate,' as appropriate; or

"(2) use any title that would imply licensure or certification in marriage and family therapy except to the extent that the person is authorized by law to perform marriage and family therapy within the course and scope of another license issued under the laws of this state."

### **§ 502.252. License Application**

See also italicized material following text of this section

(a) An applicant for a license must:

(1) file a written application with the board on a form prescribed by the board; and

(2) pay the application fee.

(b) To qualify for a license, a person must:

(1) be at least 18 years of age;

(2) hold a master's or doctorate degree in marriage and family therapy or in a related mental health field with coursework and training determined by the board to be substantially equivalent to a graduate degree in marriage and family therapy from a regionally accredited institution of higher education or an institution of higher education approved by the board;

(3) have completed two years of experience in marriage and family therapy services that is:

(A) attained after the person receives a degree that meets the requirements of Subdivision (2); and

(B) supervised in a manner acceptable to the board;

(4) be of good moral character;

(5) have not been convicted of a felony or a crime involving moral turpitude;

(6) not use drugs or alcohol to an extent that affects the applicant's professional competency;

(7) not have had a license or certification revoked by a licensing agency or by a certifying professional organization;

and

(8) not have engaged in fraud or deceit in applying for a license under this chapter.

(c) The work experience required by Subsection (b)(3) must include at least 1,000 hours of direct clinical services to individuals, couples, or families, including:

(1) at least 500 hours of direct clinical services to couples or families; and

(2) at least 200 hours of supervised provision of direct clinical services, 100 hours of which must be supervised on an individual basis. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. **Amendment by Acts 1999, 76th Leg., ch. 51, § 3** V.T.C.A., Government Code § 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 3 of Acts 1999, 76th Leg., ch. 51, eff. Sept. 1, 1999, amends § 17 of Vernon's Ann.Civ.St. art. 4512c-1 [now this section] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, § 6(a). As so amended, § 17 reads:

"Sec. 17. License Application. (a) An applicant for a license under this Act must file a written application with the board on a form prescribed by the board, accompanied by the appropriate application fee.

"(b) A person is eligible to apply for a license as a licensed marriage and family therapist associate if the person:

"(1) is at least 18 years of age;

"(2) has completed a graduate internship in marriage and family therapy, or an equivalent internship, as approved by the board;

"(3) has passed an examination determined by the board;

"(4) holds a master's or doctorate degree in marriage and family therapy or a master's or doctorate degree in a related mental health field with coursework and training determined by the board to be substantially equivalent to a graduate degree in marriage and family therapy from a regionally accredited institution of higher education or an institution of higher education approved by the board;

"(5) is of good moral character;

"(6) has not been convicted of a felony or a crime involving moral turpitude;

"(7) does not use drugs or alcohol to an extent that affects the applicant's professional competency;

"(8) has not had a license or certification revoked by a licensing agency or by a certifying professional organization; and

"(9) has not been guilty of fraud or deceit in making the application."

"(c) An applicant for a license as a licensed marriage and family therapist associate under Subsection (b) of this section shall file an application not later than the 90th day before the date of the examination that the applicant intends to take.

"(d) An applicant is eligible to apply for a license as a licensed marriage and family therapist if the person:

"(1) meets the requirements of Subsection (b) of this section;

"(2) after receipt of a degree described by Subsection (b)(4) of this section, has completed two years of work experience in marriage and family therapist services that includes at least 3,000 hours of clinical practice of which:

"(A) at least 1,500 hours consist of direct clinical services; and

"(B) at least 750 hours consist of direct clinical services to couples or families; and

"(3) has completed, in a manner acceptable to the board, at least 200 hours of supervised provision of direct clinical services by the applicant of which at least 100 hours must be supervised on an individual basis."

#### **§ 502.253. Determination Whether Examination Required**

See also italicized material following text of this section

(a) Each applicant for a license under this chapter must pass an examination prescribed by the board unless the applicant is exempted from the examination requirement:

- (1) under this chapter; or
- (2) by a determination of the board based on the applicant's education and professional experience.

(b) The board shall investigate each application and any other information submitted by the applicant.

(c) Not later than the 90th day after the date the board receives the completed application from a person seeking a license without examination, the board shall notify the applicant that:

- (1) the applicant may be licensed without examination;
- (2) the applicant must take an examination to be licensed; or
- (3) the application is rejected.

(d) If an applicant under Subsection (c) is required to take an examination, the notice required under Subsection (c) must state:

- (1) the reason for requiring the examination;
- (2) the time and manner of conducting the examination; and
- (3) the acts required of the applicant in connection with the examination.

(e) Not later than the 30th day before the date of a scheduled examination, the board shall notify an applicant seeking a license by examination whether the application has been accepted or rejected. A notice that an application is rejected must state the reason for the rejection. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. **Amendments by Acts 1999, 76th Leg., ch. 51, §§ 4, 7** V.T.C.A., Government Code § 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 4 of Acts 1999, 76th Leg., ch. 51, eff. Sept. 1, 1999, amends § 18 of Vernon's Ann.Civ.St. art. 4512c-1 [now this section] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, § 6(a). As so amended, § 18 reads:

"Sec. 18. Application Review. (a) The board shall investigate each application and other evidence submitted.

"(b) Except as provided by Subsection (c) of this section, not later than the 90th day after the date of receipt of a completed application for a license as a licensed marriage and family therapist associate, the board shall notify each applicant whether the application has been accepted or rejected.

"(c) An applicant for a license as a licensed marriage and family therapist associate is eligible to take the examination if the applicant:

"(1) is enrolled in a graduate internship described by Section 17(b)(2) of this Act and provides proof to the board that the applicant is a student in good standing in an educational program described by Section 17(b)(4) of this Act; or

"(2) has completed the internship described by Subdivision (1) of this subsection.

"(d) A notice that an application is rejected must state the reason for the rejection."

Section 7 of Acts 1999, 76th Leg., ch. 51, eff. Aug. 30, 1999, adds § 22A of Vernon's Ann.Civ.St. art. 4512c-1 without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, § 6(a). As so added, § 22A reads:

"Sec. 22A. Waiver of Examination for Certain Applicants. (a) The board may waive the requirement that an applicant for a license as a licensed marriage and family therapist pass the examination required by Section 19 of this Act if the applicant:

"(1) is a provisional license holder under Section 22 of this Act, and the board determines the applicant possesses sufficient education and professional experience to receive a license without further examination; or

"(2) holds a license issued by another licensing agency in a profession related to the practice of marriage and family therapy, and the board determines that the applicant possesses sufficient education and professional experience to receive a license without satisfying the examination requirements of this Act.

"(b) The board may adopt rules necessary to administer this section, including rules under Subsection (a)(2) of this section prescribing the professions that are related to the practice of marriage and family therapy."

#### **§ 502.254. Examination**

See also italicized material following text of this section

(a) To take the examination, an applicant must:

(1) file an application on a form prescribed by the board not later than the 90th day before the date of the examination; and

(2) pay the examination fee set by the Texas Board of Health.

(b) The examination consists of:

- (1) a written examination;
- (2) an oral examination;
- (3) a field examination that:

(A) uses questionnaires answered by persons who are competent in the judgment of the board to assess the applicant's professional ability, including the applicant's instructors, employers, or supervisors; and

(B) may include written case studies and taped interviews; or

(4) any combination of those examinations.

(c) The board shall have any written portion of an examination validated by an independent testing professional.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. **Amendment by Acts 1999, 76th Leg., ch. 51, § 3**

See italicized note following V.T.C.A., Occupations Code § 502.252.

V.T.C.A., Government Code § 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 5 of Acts 1999, 76th Leg., ch. 51, eff. Sept. 1, 1999, amends § 19(a) of Vernon's Ann.Civ.St. art. 4512c-1 [now this section, in part] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, § 6(a). As so amended, § 19(a) reads:

"(a) Each applicant for a license under this Act must pass an examination described by Section 17(b)(3) of this Act. The board shall have the written portion of the examination, if any, validated by an independent testing professional. The examination may be composed of:

"(1) a written examination;

"(2) a field examination, through questionnaires answered by the applicant's instructors, employers, supervisors, or other persons who are competent in the judgment of the board to assess the applicant's professional ability, and that may include written case studies and taped interviews;

"(3) an oral examination; or

"(4) any combination of those examinations."

#### **§ 502.255. Examination Results**

(a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.256. Reexamination**

(a) If an applicant fails an examination, the applicant may retake the examination by:

(1) paying an additional examination fee; and

(2) retaking the examination not later than the first anniversary of the date of the unsuccessful examination.

(b) If an applicant fails the examination two or more times, the board may require the applicant to:

(1) complete additional courses of study designated by the board; and

(2) present satisfactory evidence of completion of the required courses. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.257. Issuance of License**

See also italicized material following text of this section

The board shall issue a license to an applicant who:

(1) complies with the requirements of this chapter;

(2) passes the licensing examination, unless the board exempts the person from the examination requirement; and

(3) pays the required fees. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. **Amendment by Acts 1999, 76th Leg., ch. 51, § 6** V.T.C.A., Government Code § 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 6 of Acts 1999, 76th Leg., ch. 51, eff. Sept. 1, 1999, amends § 20(a) of Vernon's Ann.Civ.St. art. 4512c-1 [now this section] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, § 6(a). As so amended, § 20(a) reads:

"(a) The board shall issue a license as a licensed marriage and family therapist or licensed marriage and family therapist associate, as appropriate, to an individual who possesses the necessary requirements, passes the licensing examination, unless exempted from the examination requirement by the board, and pays the required fees."

#### **§ 502.258. Temporary License**

(a) The board by rule may provide for the issuance of a temporary license.

(b) Rules adopted under this section must include a time limit for temporary licenses. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.259. Provisional License**

(a) The board may grant a provisional license to practice as a marriage and family therapist in this state without examination to an applicant who is licensed or otherwise registered as a marriage and family therapist by another state or jurisdiction if the requirements to be licensed or registered in the other state or jurisdiction were, on the date the person was licensed or registered, substantially equal to the requirements of this chapter.

(b) An applicant for a provisional license must:

(1) be licensed in good standing as a marriage and family therapist in another state or jurisdiction that has licensing requirements that are substantially equal to the requirements of this chapter;

(2) have passed a national or other examination that:

(A) is recognized by the board; and

(B) relates to marriage and family therapy; and

(3) be sponsored by a person licensed by the board with whom the provisional license holder may practice under this section.

(c) An applicant may be excused from the requirement of Subsection (b)(3) if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(d) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license under Section 502.257. The board shall complete processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend this period to allow for the receipt and tabulation of pending examination results.

(e) The board shall issue a license under Section 502.257 to a provisional license holder if:

(1) the provisional license holder passes the examination required by Section 502.254;

(2) the board verifies that the provisional license holder satisfies the academic and experience requirements of this chapter; and

(3) the provisional license holder satisfies any other license requirements under this chapter. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.260. Inactive Status**

(a) The board may place a license holder's license under this chapter on inactive status if the holder is not actively engaged in the practice of marriage and family therapy and the holder submits a written request to the board before the expiration of the holder's license.

(b) The board shall maintain a list of each license holder whose license is on inactive status.

(c) A license holder whose license is on inactive status:

(1) is not required to pay an annual renewal fee; and

(2) may not perform an activity regulated under this chapter.

(d) The board shall remove the license holder's license from inactive status if the person:

(1) notifies the board in writing that the person intends to return to active practice;

(2) pays an administrative fee; and

(3) complies with educational or other requirements the board adopts by rule. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.261. Duties of License Holder**

(a) A license holder shall display the license holder's license in a conspicuous manner in the person's principal place of practice.

(b) Each license holder shall notify the board of the license holder's current address. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **SUBCHAPTER G. LICENSE RENEWAL**

#### **§ 502.301. Renewal of License**

(a) A license issued under this chapter is subject to annual renewal. The board shall adopt a system under which licenses expire on various dates during the year.

(b) The board shall notify each license holder in writing of the pending license expiration not later than the 30th day before the date on which the license expires.

(c) A license holder may renew an unexpired license by paying to the board the required renewal fee before the date the license expires.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board the required renewal fee and a fee that is equal to half of the amount of the examination fee. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the amount of the examination fee for the license.

(e) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.302. Renewal of Expired License by Out-Of-State Practitioner**

(a) The board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the application.

(b) The person must pay to the board a fee that is equal to the amount of the examination fee. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.303. Continuing Education**

(a) The board shall establish a mandatory continuing education program for license holders.

(b) The board by rule shall establish:

(1) the minimum number of hours of continuing education required to renew a license under this chapter; and

(2) a process to evaluate and approve continuing education courses.

(c) The board may assess the continuing education needs of license holders and require license holders to attend continuing education courses specified by the board.

(d) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The board shall implement a procedure to assess a license holder's participation in continuing education programs.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

## **SUBCHAPTER H. DISCIPLINARY ACTIONS AND PROCEDURES**

### **§ 502.351. Grounds for Disciplinary Actions**

The board shall reprimand a license holder, place on probation a person whose license has been suspended, or suspend or revoke a holder's license if the person:

- (1) is convicted of a misdemeanor involving moral turpitude or a felony;
- (2) obtains or attempts to obtain a license by fraud or deception;
- (3) uses drugs or alcohol to an extent that affects the license holder's professional competence;
- (4) performs professional duties in a grossly negligent manner;
- (5) is adjudicated as mentally incompetent by a court;
- (6) practices in a manner that is detrimental to the public health or welfare;
- (7) advertises in a manner that tends to deceive or defraud the public;
- (8) has a license or certification revoked by a licensing agency or a certifying professional organization;
- (9) violates this chapter or a rule or code of ethics adopted under this chapter; or
- (10) commits an act for which liability exists under Chapter 81, Civil Practice and Remedies Code.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.352. Probation**

If a license suspension is probated, the board may require the license holder to:

- (1) report regularly to the board on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the board; or
- (3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in the areas that are the basis for probation.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.353. Informal Proceedings**

See, also, italicized material following text of this section

(a) The board by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section 2001.056, Government Code; and
- (2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must:

- (1) provide the complainant and the license holder with an opportunity to be heard; and

(2) require the presence of a member of the board's legal staff, if the board has a legal staff, or, if the board does not have a legal staff, an attorney employed by the attorney general to advise the board or the board's employees. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. **Amendment by Acts 1999, 76th Leg., ch. 1444, § 3**  
V.T.C.A., Government Code § 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 3 of Acts 1999, 76th Leg., ch. 1444, eff. Aug. 30, 1999, rennumbers and amends former § 11B as § 11C of Vernon's Ann.Civ.St. art. 4512c-1 [now this section] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, § 6(a). As so amended, § 11C reads:

"Informal Proceedings

"(a) The board by rule shall adopt procedures governing:

"(1) informal disposition of a contested case under Section 2001.056, Government Code; and

"(2) informal proceedings held in compliance with Section 2001.054, Government Code.

"(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard and must require the presence of an attorney to advise the board or board's employees. The attorney must be a member of the board's legal staff if the board has a legal staff. If the board does not have a legal staff, the attorney must be an employee of the office of the attorney general."

### **§ 502.354. Hearing**

A license holder is entitled to a hearing before the State Office of Administrative Hearings before a sanction is imposed under this subchapter. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.355. Sanctions**

(a) The board by rule shall adopt a broad schedule of sanctions for violations under this chapter.

(b) The State Office of Administrative Hearings shall use the schedule for a sanction imposed as the result of a hearing conducted by that office. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

## **SUBCHAPTER I. ADMINISTRATIVE PENALTY**

### **§ 502.401. Imposition of Penalty**

The commissioner may impose an administrative penalty on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **§ 502.402. Amount of Penalty**

(a) The amount of an administrative penalty may not exceed \$1,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

- (1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the prohibited acts; and

- (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the economic harm to property or the environment caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts made to correct the violation; and
- (6) any other matter that justice may require. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.403. Report and Notice of Violation and Penalty**

- (a) If the commissioner determines that a violation has occurred, the commissioner may issue to the board a report stating:
  - (1) the facts on which the determination is based; and
  - (2) the commissioner's recommendation on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.
- (b) Not later than the 14th day after the date the report is issued, the commissioner shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:
  - (1) include a brief summary of the alleged violation;
  - (2) state the amount of the recommended penalty; and
  - (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.404. Penalty to be Paid or Hearing Requested**

- (a) Not later than the 20th day after the date the person receives the notice under Section 502.403, the person, in writing, may:
  - (1) accept the commissioner's determination and recommended administrative penalty; or
  - (2) request a hearing on the occurrence of the violation, the amount of the penalty, or both.
- (b) If the person accepts the commissioner's determination and recommended administrative penalty, the board by order shall approve the determination and impose the recommended penalty. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.405. Hearing**

- (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the department shall set a hearing and give notice of the hearing to the person.
- (b) A hearing examiner designated by the department shall hold the hearing.
- (c) The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision as to the occurrence of the violation and the amount of a proposed administrative penalty. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.406. Decision by Board**

- (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:
  - (1) a violation occurred and impose a penalty; or
  - (2) a violation did not occur.
- (b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.407. Options Following Decision: Pay or Appeal**

- (a) Not later than the 30th day after the date the board's order becomes final, the person shall:
  - (1) pay the penalty;
  - (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or
  - (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.
- (b) Within the 30-day period, a person who acts under Subsection (a)(3) may:
  - (1) stay enforcement of the penalty by:
    - (A) paying the penalty to the court for placement in an escrow account; or
    - (B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until all judicial review of the board's order is final; or
  - (2) request the court to stay enforcement of the penalty by:
    - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
    - (B) giving a copy of the affidavit to the commissioner by certified mail.
- (c) If the commissioner receives a copy of an affidavit under Subsection (b)(2), the commissioner may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.
- (d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is unable to pay the penalty or give a supersedeas bond. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.408. Collection of Penalty**

If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.409. Determination by Court**

- (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.
- (b) If a court does not sustain the determination that a violation occurred, the court shall order that an administrative penalty is not owed. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.410. Remittance of Penalty and Interest**

(a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

- (1) order the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or
- (2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid to the court and ending on the date the penalty is remitted. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.411. Administrative Procedure**

A proceeding under this subchapter is subject to Chapter 2001, Government Code. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

### **SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

#### **§ 502.451. Injunction**

(a) In addition to any other action authorized by law, the board or department may institute an action to enjoin a violation of this chapter.

(b) An action filed under this section must be filed in Travis County, the county of the defendant's residence, or the county in which any part of the violation occurred.

(c) The attorney general or the appropriate county or district attorney shall represent the board or department in an action under this section. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.452. Monitoring of License Holder**

See, also, italicized material following text of this section

The board by rule shall develop a system to ensure that a license holder complies with this chapter. Rules adopted under this section must include procedures to:

- (1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and
- (2) identify and monitor each license holder who represents a risk to the public. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. **Amendment by Acts 1999, 76th Leg., ch. 1444, § 3**

V.T.C.A., Government Code § 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 3 of Acts 1999, 76th Leg., ch. 1444, eff. Aug. 30, 1999, rennumbers former § 11C as § 11D of Vernon's Ann.Civ.St. art. 4512c-1 [now this section] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, § 6(a).

#### **§ 502.453. Civil Penalty**

(a) A person who violates this chapter or a rule or order adopted by the board under this chapter is liable for a civil penalty not to exceed \$1,000 a day.

(b) At the request of the board or department, the attorney general shall bring an action to recover a civil penalty authorized under this section. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

#### **§ 502.454. Criminal Penalty**

(a) A person required to hold a license under this chapter commits an offense if the person knowingly acts as a marriage and family therapist without holding a license issued under this chapter.

(b) An offense under Subsection (a) is a Class B misdemeanor. Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.